

**GUIDANCE for  
M.G.L. c. 40R  
and  
760 CMR 59.00:**

**SMART GROWTH ZONING  
AND  
SHARTER HOME ZONING**

**December 29, 2017**



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## **I. INTRODUCTION**

The Department of Housing and Community Development (DHCD) is issuing this Guidance to aid in the administration of the Smart Growth and Starter Home Programs under M.G.L. c. 40R (Chapter 40R) and 760 CMR 59.00: Smart Growth Zoning Districts and Starter Home Zoning Districts (Regulations). This Guidance describes the process by which Municipalities may propose, for review and approval by DHCD, new 40R Zoning provisions that allow the As-of-right development of high-density Smart Growth housing, Starter Homes and Mixed-use Development within zoning overlay Districts.

Chapter 40R seeks to substantially increase the supply of housing and decrease its cost, by increasing the amount of land zoned for dense housing. It targets the shortfall in housing for low- and moderate-income households, by requiring the inclusion of affordable units in most private projects. The Smart Growth Zoning Overlay District Act, Chapter 149 of the Acts of 2004, codified as M.G.L. c. 40R, was originally enacted to encourage communities to create dense residential or mixed-use smart growth zoning districts, including a high percentage of affordable housing units, to be located near transit stations, in areas of concentrated development such as existing city and town centers, and in other highly suitable locations.

Chapter 40R provides financial incentives for communities to establish smart growth zoning overlay districts, as well as bonus payments for units constructed as a result of the greater density afforded in the districts.

Chapter 40R was amended by St. 2016, c. 219, to provide the same financial incentives for starter home zoning districts, which are districts zoned as of right for 4 single-family home units per acre as well as accessory dwelling units, to be located in highly suitable locations that are similar to, but more flexible or expansive than the locations for smart growth zoning. The revised Regulations, promulgated effective December 29, 2017, sets out the application process and requirements for both types of zoning districts. Upon state review and approval of a local overlay district, communities become eligible for Zoning Incentive Payments.

Projects must be developable under the community's Smart Growth Zoning or Starter Home Zoning adopted under Chapter 40R, either As-of-right or through a limited plan review process akin to site plan review. Communities are eligible for Bonus Payments upon the issuance of building permits for Incentive Units.

This Guidance provides explanations of terms used in the Regulations and identifies sources of useful information to assist Municipalities in preparing applications for approval of overlay districts, and to guide developers in preparing applications for plan approval by Municipalities. All capitalized terms used in this Guidance and not specifically defined in this Guidance will have the meaning provided in the M.G.L. c. 40R, § 2 or in the Regulations.<sup>1</sup>

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<sup>1</sup> See Section II below regarding transition rules for 40R Zoning in process as of December 29, 2017.

Included in this Guidance are forms and templates for submission of application and reporting information to DHCD. Please contact the following DHCD staff with any questions.

William Reyelt, Principal Planner, Smart Growth Program, at 617-573-1355, or  
[William.Reyelt@State.MA.US](mailto:William.Reyelt@State.MA.US)

Elaine Wijnja, Principal Planner, Land Use and Growth Management, at 617-573-1360  
[Elaine.Wijnja@State.MA.US](mailto:Elaine.Wijnja@State.MA.US)

## **II. TRANSITION RULES**

These Transition Rules will assist communities in implementing Smart Growth Zoning and Starter Home Zoning in light of revisions to the Regulations that were promulgated on December 29, 2017 (2017 Version).

1. The version of the Regulations that is in effect as of the date the Municipality holds its preliminary public hearing regarding the adoption of proposed 40R Zoning pursuant to 760 CMR 59.05(1) applies to the notice and the hearing, except that a Municipality that published notice of the hearing on or prior to December 29, 2017 is encouraged but not required to post notice on its website as required by the 2017 Version.
2. Except as provided in this Section and in Section 5 below, the version of the Regulations that is in effect on the date the Municipality submits to DHCD an application for preliminary determination of eligibility of 40R Zoning under 760 CMR 59.03(1) applies to the following:
  - a. The form and content of such application;
  - b. The review and approval standards under 760 CMR 59.03, 760 CMR 59.04, and 760 CMR 59.05(1) to (4), except that in all cases Affordable Units shall be subject to affordable housing restrictions that are approved by DHCD in accordance to DHCD guidance, pursuant to the 2017 Version of 760 CMR 59.04(1)(j); and
  - c. The Plan Review procedure and standards under 760 CMR 59.04(1)(f).

With written notice to DHCD, a Municipality that has submitted an application for preliminary determination of eligibility of 40R Zoning prior to December 29, 2017 may choose to have the 2017 Version apply to the review and approval standards under 760 CMR 59.03, 760 CMR 59.04, and 760 CMR 59.05(1) to (4); and the Plan Review procedure and standards under 760 CMR 59.04(1)(f).

3. The version of the Regulations that is in effect as of the date of submission of a proposed amendment or repeal of a 40R Zoning District, as that term is defined in the 2017 Version, to DHCD under 760 CMR 59.05(5) applies to the amendment or repeal procedure and standards.
4. A Municipality's entitlement to Zoning Incentive Payments or Bonus Payments is determined pursuant to the review and approval standards of the version of the Regulations in effect as of the date of submission of the 40R Zoning Application for the applicable 40R Zoning District, except that the 2017 Version will apply to the determination of whether Zoning Incentive Payments or Bonus Payments will be suspended or required to be repaid pursuant to 760 CMR 59.06(3).

5. Except for 40R Districts that have been approved prior to December 29, 2017, the definitions of Bonus Unit, Highly Suitable Location, and Incentive Unit contained in 760 CMR 59.02 of the 2017 Version shall apply.
6. The 2017 Version applies to all provisions contained in the Regulations not specifically addressed in these Guidelines.

### **III. DEFINITIONS AND TERMINOLOGY**

#### **A. Additional Municipal Standards**

##### **1. Municipal Certification of Additional Municipal Standards**

Documentation substantiating the imposition of Additional Municipal Standards must generally be certified by a Municipal engineer or public works, board of health or conservation commission official (with relevant expertise). Where a Municipal official with the necessary expertise is not available to provide such certification or such certification/documentation is deemed insufficient, DHCD may accept or, if necessary, require certification provided by a qualified, official from another Massachusetts Municipality, an applicable regional entity (e.g., RPA), or qualified consultant who meets the applicable professional licensing and certification requirements.

##### **2. DEP Determination that Local Conditions Warrant Imposition of Additional Municipal Standards**

Relative to 760 CMR 59.05(2)(f)5., if DEP determines that local conditions warrant imposition of Additional Municipal Standards, DHCD will issue a revised preliminary determination of eligibility within 30 days. Absent the intervening receipt of new information (e.g., Developer Certificate of Feasibility) demonstrating, to the satisfaction of DHCD, that the imposition of such Additional Municipal Standards, nonetheless, will not Render Development Infeasible within the Starter Home Zoning District, DHCD may place additional conditions in such revised preliminary determination of eligibility. Such revised Letter of Conditional Eligibility may specify that any corresponding DHCD approval of the subsequently adopted District be subject to a Letter of Conditional Approval. Such Letter of Conditional Approval may condition eligibility for all or a portion of any associated Zoning Incentive Payment upon submission of building permits, other local permits, information about municipal extension of infrastructure or other adequate information demonstrating that the Additional Municipal Standards will not Render Development Infeasible.

#### **B. Affordable and Income-restricted Sale Prices and Rents**

##### **1. General**

This section of the Guidance describes how maximum sale prices and rents must be determined for:

- a. Residential units sold and rented as “Affordable” units as part of a Project developed under Smart Growth Zoning pursuant to M.G.L. c. 40R, § 6(4) and 760 CMR 59.04(1)(e)1., restricted for sale and rent both at initial occupancy and turnover to households whose income is equal to or less than 80% of area median income as

determined by the Department of Housing and Urban Development (HUD) annually for Metropolitan Statistical areas (MSAs) and non-metropolitan counties, adjusted for household size as described below (AMI); and

- b. Residential units sold and rented as “Income-restricted” units as part of a Project developed under Starter Home Zoning pursuant to M.G.L. c. 40R, § 6(5) and 760 CMR 59.04(1)(e)2., restricted for sale and rent both at initial occupancy and turnover to households whose income is equal to or less than 100% of AMI.

## 2. Maximum Sale Prices - General

- a. Maximum sale prices for Affordable units and Income-restricted units are established at a level affordable to households at an income 10% below the maximum income eligibility level, creating a “window of opportunity” for income-eligible households to obtain financing for and occupy such units without spending an excessive percentage of their income on housing costs. Area median incomes are based on annual HUD determinations for MSAs and non-metropolitan counties based on household size. Setting maximum sale prices at what is affordable to a household earning slightly less than the maximum qualifying income also means that the sale prices will be affordable to a range of income-eligible purchasers, making it more likely that units will actually be sold to purchasers meeting income eligibility requirements for Affordable and Income-restricted units.
- b. Applicants for Affordable units and Income-restricted units must meet the applicable income limits in effect both at the time that they initially apply for a unit and at the time when they actually purchase a unit.
- c. In the formula described below, maximum sale prices are calculated based not on the actual income of the purchaser, but rather on an imputed household size assuming that the number of household members of the family most likely to occupy the unit will be equal to the number of bedrooms plus one. For example, a two-bedroom unit would be priced based on a formula tied to the applicable percentage of AMI for a household of three, and a three-bedroom unit would be priced based on a formula tied to the applicable percentage of AMI for a household of four.
- d. Municipalities must select a monitoring agent that will be responsible for monitoring Income-restricted and Affordable units in 40R Projects to verify their continued affordability and compliance with a 40R affordable housing restriction approved by DHCD (40R AHR). The monitoring agent must calculate and approve the applicable initial maximum sale prices, as well as resale prices on turnover, of Income-restricted and Affordable units in 40R Projects consistent with this Guidance. The 40R AHR must also require purchasers, upon initial sale and subsequent resales of Income-restricted and Affordable units, to execute an affordable housing restriction in the form of a deed rider approved by DHCD, which incorporates maximum sale price restrictions consistent with



this Guidance (40R Deed Rider).

### 3. Calculating Maximum Sale Prices

- a. *Smart Growth Affordable Units* – The maximum sale price of an Affordable unit must be set so that a household of the imputed size based on the number of bedrooms in the unit plus one, earning 70% of AMI for a household of that size, would not expend more than 30% of monthly income for the Monthly Housing Cost, defined below. See Table 1.1 for an example of how the maximum sale price of an Affordable unit is calculated.
- b. *Starter Home Income-restricted Units* – The maximum sale price of an Income-restricted unit must be set so that a household of the imputed size based on the number of bedrooms in the unit plus one, earning 90% of AMI for a household of that size, would not expend more than 30% of monthly income for the Monthly Housing Cost, defined below. See Table 1.2 for an example of how the maximum sale price of an Income-restricted unit is calculated.
- c. *Monthly Housing Cost* - For purposes of calculating maximum sale prices of Affordable units and Income-restricted units, the Monthly Housing Cost includes mortgage principal and interest (assuming a 5% down payment, 30-year fully amortizing mortgage loan with a fixed interest rate that is 50 basis points above the then-current average 30-year fixed-rate mortgage interest rate according to the Freddie Mac Primary Mortgage Market Survey), property taxes, hazard insurance (for condominium projects with master insurance policies, the yearly premium is assumed to cost \$4/\$1,000 of the maximum sale price and, for all other projects, \$6/\$1,000 of the maximum sale price), private mortgage insurance (assuming that the yearly premium costs 0.078% of the maximum sale price), and condominium, co-op or homeowner association fee payments.
- d. *Role of Monitoring Agent* – The monitoring agent will be responsible for setting the initial maximum sale price for each Affordable and Income-restricted unit taking into account the then-current applicable AMI and Monthly Housing Costs. 40R Deed Riders executed by each purchaser of Affordable and Income-restricted units will require that, upon resale, a new discounted purchase price will be set by the monitoring agent identified in the applicable 40R AHR, based on the formula described in the 40R Deed Rider. The monitoring agent will be responsible for monitoring and enforcing the maximum sale price restrictions contained the 40R AHR and 40R Deed Rider upon subsequent resales of both Affordable and Income-restricted units.
- e. *Homeownership Association/Condominium Association Fees* - If a 40R Project will be developed as a condominium or cooperative requiring payment of monthly fees tied to percentage interest, or if the 40R Project will establish a homeownership association requiring payment of association fees, the maximum initial fees must be approved by the monitoring agent and identified in the 40R AHR. The maximum initial fee, in turn,

will be taken into account as part of the calculation of the maximum sale price. For condominium units, the ratio of the approved monthly condominium fees to the aggregate monthly fees for the condominium must correspond to the percentage interests assigned to the Affordable units or Income-restricted units, as applicable, in the condominium master deed. This, in turn, may require that a lower percentage interest be assigned to those units in the master deed as compared with market-rate units. The schedule of beneficial interests in the master deed should be reviewed by the monitoring agent to confirm that Affordable units or Income-restricted units, as applicable, have been assigned percentage interests in the condominium that correspond to the ratio of the approved monthly condominium fees to the aggregate monthly fees for the condominium. Condominium projects with extraordinary on-going costs (such as the cost of on-site wastewater treatment plants, elevators, parking garages, etc.) must reflect the cost of operating and maintaining such facilities in their condominium budgets (including replacement reserves).

For the resale of an Affordable or Income-restricted unit, the unit's then-current fee will be used by the monitoring agent to calculate the maximum sale price.

Tables 1.1 and 1.2 below illustrate the calculation of the maximum sale price for Affordable and Income-restricted units, respectively.

**Table 1.1: Calculating the Maximum Sale Price of an Affordable Unit**

<b>Affordable Unit Maximum Sale Price</b>	
<b>Household Income:</b>	
# of Bedrooms	2
Imputed Household size	3
<a href="#">70% AMI Income</a>	\$61,556
<b>Maximum Monthly Housing Cost @ 70%AMI (\$61,556 x 30% / 12)</b>	<b>\$1,539</b>
<b>Housing Cost:</b>	
<b>Assumptions</b>	
Sales Price	\$199,700
5% Down payment	\$9,985
Mortgage	\$189,715
Interest rate	4.50%
Amortization	30
Tax Rate	\$12.79
<b>Actual Monthly Housing Cost (\$199,700 Sale Price)</b>	<b>\$1,539</b>
Monthly Principal & Interest Payments	\$961.26
Monthly Property Tax	\$213
Monthly Hazard Insurance	\$67
Monthly Private Mortgage Insurance	\$123
Monthly Condo/HOA fees (if applicable)	\$175

**Note:**

The above table provides the Sale Price for a 2-bedroom Affordable Unit in Bridgewater, MA using the applicable (Barnstable HMFA/MSA) regional income limit for 2017 adjusted to the applicable target household size (i.e., 3-person) and assuming the local 2017 tax rate of \$15.61, a mortgage interest rate of 4.5%, and monthly condo fees of \$175.

The established Sale Price results in a Monthly Housing Cost that matches the Target Monthly Housing Cost for a household earning 70% of the applicable AMI.

The allowable Sale Price will increase or decrease if there are any changes in any of the key variables that determine Monthly Housing Cost. An increase in interest rates, resulting in higher Monthly Principal and Interest Payments for a given loan amount, could drive up the Monthly Housing Cost above the maximum allowable, necessitating a reduction in the Maximum Sale Price to lower monthly debt payments. Conversely, an increase in the AMI would increase the permitted maximum Monthly Housing Cost allowing an increase in the Maximum Sale Price if no other variable changes.

**Table 1.2: Calculating the Maximum Sale Price of an Income-restricted Unit**

<b>Income-restricted Unit Maximum Sale Price</b>	
<b>Household Income:</b>	
# of Bedrooms	2
Imputed Household size	3
<a href="#">100% AMI Income</a>	\$81,180
<b>Maximum Monthly Housing Cost @ 90%AMI (\$81,180 x 30% / 12)</b>	<b>\$2,030</b>
<b>Housing Cost:</b>	
<b>Assumptions</b>	
Sales Price	\$241,900
5% Down payment	\$12,095
Mortgage	\$229,805
Interest rate	4.50%
Amortization	30
Tax Rate	\$12.79
<b>Actual Monthly Housing Cost (\$241,900 Sale Price)</b>	<b>\$1,827</b>
Monthly Principal & Interest Payments	\$1,164
Monthly Property Tax	\$258
Monthly Hazard Insurance	\$81
Monthly Private Mortgage Insurance	\$149
Monthly Condo/HOA fees (if applicable)	\$175

**Note:** The above table provides the Sale Price for a 2-bedroom Income-restricted Unit in Bridgewater, MA using the applicable (Barnstable HMFA/MSA) regional income limit for 2017 adjusted to the applicable target household size (i.e., 3-person) and assuming the local 2017 tax rate of \$15.61, a mortgage interest rate of 4.5%, and monthly condo fees of \$175.

The established Sale Price results in a Monthly Housing Cost that matches the Target Monthly Housing Cost for a household earning 100% of the applicable AMI.

The allowable Sale Price will increase or decrease if there are any changes in any of the key variables that determine Monthly Housing Cost. An increase interest rates, resulting in higher Monthly Principal and Interest Payments for a given loan amount could drive up the Monthly Housing Cost above the maximum allowable, necessitating a reduction in the Maximum Sale Price to lower monthly debt payments. Conversely, an increase in the AMI would increase the permitted maximum Monthly Housing Cost allowing an increase in the Maximum Sale Price if no other variables change.

#### 4. Maximum Rents – General

- a. For both Income-restricted and Affordable units, the monthly rent is established at a level affordable to households at a specified income level so that households do not spend more than 30 percent of their monthly income on housing costs. Monthly rent plus any reasonable utility allowance must be less than or equal to 30 percent of imputed monthly income as determined by the AMI of the applicable household size, based on the number of bedrooms plus one.
- b. If the utilities of Income-restricted and Affordable units are separately metered and the utilities are paid by the tenant, the monthly rent must be reduced to reflect the tenant's payment of utilities, based on the area's utility allowance.
- c. The area's utility allowance must be based on the current Section 8 utility allowance for the applicable unit size and type as adopted by the Municipality's housing authority, or, if the Municipality or its region does not have a housing authority, a neighboring Municipality's or region's housing authority, or other non-profit or government organization approved by DHCD or the monitoring agent identified in the 40R AHR.
- d. Initial monthly rents for Income-restricted and Affordable units in a 40R Project must be approved by the monitoring agent. The monitoring agent will be responsible for annually approving changes in monthly rents and utility allowances proposed by owners of 40R Projects consistent with the 40R Regulations and this Guidance.
- e. The monthly rent of Income-restricted and Affordable units may not be increased without the approval of the monitoring agent. An increase may only be allowed in proportion to growth in AMI as determined by HUD.
- f. Applicants for Income-restricted and Affordable units must meet the applicable income limits in effect both at the time they apply for a unit and during their occupancy of the unit. If the income of the tenant household of an Income-restricted or Affordable unit later exceeds 140% of the maximum income permitted, the applicable rent restrictions will no longer apply to that household and that unit will no longer be considered Income-restricted or Affordable. In that case, the next available market-rate unit in the 40R Project with the same or greater number of bedrooms must be rented to an eligible household.

## 5. Calculating Maximum Rents for Smart Growth Affordable Units

Rents for Affordable units must be set so that a household of the imputed size based on the number of bedrooms in the unit plus one, earning 80% of the applicable AMI, would not spend more than 30% of the household's monthly income for housing costs, which include rent and a utility allowance, if applicable. See Table 2.1 for an example of the rent calculation of two-bedroom and three-bedroom Affordable units in the Barnstable MSA.

**Table 2.1: Calculating Affordable Rents**

Calculation of Maximum Rent Without Utility Allowance				
Barnstable MSA	Household Size (Number of Bedrooms + 1)	80% of AMI	Monthly Income (80% of AMI)	Maximum Housing Cost/Rent (30% of Monthly Income)
2 Bedroom Unit	3 Person Household	\$61,200	\$5,100	\$1,530
3 Bedroom Unit	4 Person Household	\$68,000	\$5,667	\$1,700

Calculation of Maximum Rent With Utility Allowance						
Barnstable MSA	Household Size (Number of Bedrooms + 1)	80% of AMI	Monthly Income (80% of AMI)	Maximum Housing Cost (30% of Monthly Income)	Utility Allowance	Maximum Rent (Max. Housing Cost Minus Utility Allowance)
2 Bedroom Unit	3 Person Household	\$61,200	\$5,100	\$1,530	\$196	\$1,334
3 Bedroom Unit	4 Person Household	\$68,000	\$5,667	\$1,700	\$240	\$1,460

**Note:** The above tables provide the respective maximum allowable rent for 2-bedroom and 3-bedroom Affordable units using the Barnstable MSA regional limit for 2017 adjusted to the applicable target household size (i.e., a 3-person household and 4-person household respectively). The Utility Allowances shown include monthly payments for natural gas heating, cooking, water heating, and fees; electricity use and fees; air conditioning; and water as reflected on the chart for Apartments on the Barnstable Housing Authority's Allowances for Tenant Furnished Utilities and other Services, dated November 1, 2016.

## 6. Calculating Maximum Rents for Starter Home Income-restricted Units

Rents for Income-restricted units must be set so that a household of the imputed size based on the number of bedrooms in the unit plus one, earning 100% of the applicable AMI, would not spend more than 30% of the household's monthly income for housing costs, which include rent and a utility allowance, if applicable. See Table 2.2 for an example of the rent calculation of two-bedroom and three-bedroom Income-restricted units in the Barnstable MSA.

**Table 2.2: Calculating Income-restricted Rents**

Calculation of Maximum Rent Without Utility Allowance				
Barnstable Town MSA	Household Size (Number of Bedrooms + 1)	100% of AMI	Monthly Income (100% of AMI)	Maximum Housing Cost/Rent (30% of Monthly Income)
2 Bedroom Unit	3 Person Household	\$81,180	\$6,765	\$2,030
3 Bedroom Unit	4 Person Household	\$90,200	\$7,517	\$2,255

Calculation of Maximum Rent With Utility Allowance						
Barnstable MSA	Household Size (Number of Bedrooms + 1)	100% of AMI	Monthly Income (100% of AMI)	Maximum Housing Cost (30% of Monthly Income)	Utility Allowance	Maximum Rent (Max. Housing Cost Minus Utility Allowance)
2 Bedroom Unit	3 Person Household	\$81,180	\$6,765	\$2,030	\$296	\$1,734
3 Bedroom Unit	4 Person Household	\$90,200	\$7,517	\$2,255	\$346	\$1,909

**Note:** The above tables provide the respective maximum allowable rent for 2-bedroom and 3-bedroom Income-restricted units using the Barnstable MSA regional limit for 2017 adjusted to the applicable target household size (i.e., a 3-person household and 4-person household respectively). The Utility Allowances shown include monthly payments for natural gas heating, cooking, water heating, and fees; electricity use and fees; air conditioning; water; and trash collection as reflected on the chart for Detached Houses on the Barnstable Housing Authority's Allowances for Tenant Furnished Utilities and other Services, dated November 1, 2016.

## C. Capital Expenditures

### 1. General

When M.G.L. c. 40R was originally enacted, a Smart Growth Housing Trust Fund (Trust Fund) was established under M.G.L. c. 10, § 35AA, to be used, without appropriation, by DHCD for the purpose of making payments to Municipalities (including both Zoning Incentive Payments and Density Bonus Payments) (collectively, 40R Payments). Funding for the Trust Fund derived from the sale of state surplus lands, appropriations from the General Fund of the Commonwealth, and monetary sanctions, if any, imposed by DHCD under M.G.L. c. 40R, § 7(c). Because none of those sources was restricted for use for capital expenditures, DHCD did not impose any limitations on Municipalities with respect to the use of 40R Payments.

When it became apparent that the sources designated for deposit into the Trust Fund under M.G.L. c. 10, § 35AA would be insufficient to make required 40R Payments to Municipalities, additional funding sources were required. Pursuant to Section 2B of Chapter 219 of the Acts of 2016 (Chapter 219), the Legislature authorized funding, under Line Item 7004-8016, in the amount of up to \$15,000,000, to recapitalize the Trust Fund. As described in Section 133 of Chapter 219, the source of such funding is the issuance and sale of bonds of the Commonwealth. The Commonwealth's Five-Year Capital Investment Plan for Fiscal Years 2018-2022 specifically contemplates use of capital funding to provide payments to Municipalities.<sup>2</sup>

The Executive Office for Administration and Finance of the Commonwealth (ANF) is the state agency with authority and responsibility for determining what constitutes a "capital expenditure" and, therefore, an authorized use of the capital funds to be used to make 40R Payments. In response to public comment on the revised Regulations, DHCD is issuing this guidance to aid Municipalities in understanding what may constitute a capital expenditure, and to refer Municipalities to ANF and Department of Revenue (DOR) resources for further guidance. It is not DHCD's intention to substitute DHCD's judgment for that of ANF or DOR, and Municipalities with further questions should consult those agencies directly.

### 2. Terminology<sup>3</sup>

- a. A "capital expenditure" is an expenditure made in acquiring, adding to or bettering a "fixed" or "capital" asset. For accounting purposes, capital expenditures are not charged against current revenue. They are added to capital account or "capitalized"

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<sup>2</sup> Report available at <http://www.mass.gov/bb/cap/fy2018/dnld/fy18capitalplanma.pdf>. As described in the report, the FY18 capital plan only includes "bond cap" spending, the source of which is general obligation bonds subject to the debt limit issued in a fiscal year to support *capital spending*.

<sup>3</sup> Many of the terms used in this Capital Expenditures section are derived from the Budget Glossary published by ANF and available at <http://www.mass.gov/anf/budget-taxes-and-procurement/state-budget/budget-process/budget-glossary.html#gC>.



and then may be depreciated, amortized, or recovered when the underlying asset is sold. This concept should be distinguished from an expenditure or cost which, for accounting purposes, is charged against current revenue (referred to as an “expense”).

- b. The terms “capital asset” and “fixed asset” are used interchangeably. According to the Municipal Finance Glossary published by DOR’s Division of Local Services (DLS),<sup>4</sup> the term “Capital Assets” includes all tangible property used in the operation of government, which is not easily converted into cash, and has an initial useful life extended beyond a single financial reporting period. DLS’ Municipal Finance Glossary gives examples of capital assets including land and land improvements; infrastructure such as roads, bridges, water and sewer lines; easements; buildings and building improvements; vehicles, machinery and equipment, noting that communities typically define capital assets in terms of a minimum useful life and a minimum initial cost.
- c. This concept of communities “defining” capital assets is important, as Massachusetts gives Municipalities flexibility to develop their own definitions of capital assets as part of their capital improvements program. DLS guidance for Municipalities on developing a capital improvements program<sup>5</sup> describes the process by which a Municipality should develop the key components of a capital improvements program: a **capital budget** and a **capital program**. As described in DLS’ *Capital Improvement Planning Manual*,<sup>6</sup> local policymakers define the criteria by which an expenditure is determined to be a capital expenditure or an expense in a departmental operating budget:

“For instance, a policy might state that to qualify as a capital expenditure, a proposed purchase or project must have a useful life of five years or more and must exceed \$25,000 in cost. Both thresholds must be satisfied; otherwise the purchase or project is not a capital item and should be funded as an expense in the departmental operating budget. Local policy may also dictate that any capital expenditure less than \$50,000 should be financed through cash and that requesting departments must clearly state all impacts to the operating budget in their project descriptions.”

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<sup>4</sup> Municipal Finance Glossary, available at <https://www.mass.gov/files/documents/2017/09/08/Municipal%20Finance%20Glossary.pdf>.

<sup>5</sup> Division of Local Services, Massachusetts Department of Revenue, *Capital Improvement Planning Guide: Developing a Comprehensive Community Program*, August, 2016, available at <http://www.mass.gov/dor/docs/dls/tab/cipguidefinal.pdf>. This guide superseded earlier guidance Municipal Data Management and Technical Assistance Bureau, Division of Local Services, Department of Revenue, *Developing a Capital Improvements Program: A Manual for Massachusetts Communities*, March, 1997.

<sup>6</sup> *Capital Improvement Planning Manual Forms and Instructions*, August 2016, available at <http://www.mass.gov/dor/docs/dls/tab/cipmanualfinal.pdf>.

- d. Another way of thinking about capital expenditures is that they are typically expenditures that can materially add to the useful life of property and remain in use for an indefinite period of time.<sup>7</sup> Based on Internal Revenue Service and DLS guidance, capital expenditures may include, but are not limited to:
- i. Acquisition costs - land, buildings and other capital assets;
  - ii. New building construction or capital improvements to existing infrastructure;
  - iii. Infrastructure such as roads, sidewalks and curbs, bridges, tunnels, electrical lines, water lines, and sewer lines;
  - iv. The cost of acquiring long-term easements over real property;
  - v. Acquisition costs of vehicles, machinery, and heavy equipment, or major building fixtures;
  - vi. The cost of acquiring, creating, or making major renovations to parks and recreational fields;
  - vii. Research and feasibility studies, engineering or design work required for a capital project; and
  - viii. Certain computer equipment and technology.
- e. Expenditures not associated with tangible property or those expenditures associated with tangible property that does not have a minimum useful life span are not capital expenditures. Examples of costs that are **not** capital expenditures include, but are not limited to:
- i. Operating expenses including rent, salaries, insurance, and utilities;
  - ii. Maintenance expenses;
  - iii. Small purchases with a short life span including most office equipment, purchases associated with meetings and events, and all perishable items; and
  - iv. Ongoing debt service payments.

3. Expenditures In Connection with Privately Owned Project Serving a Public Purpose.

Some Municipalities may wish to make funds available as loans or grants to private parties to further a legitimate public purpose. For example, a Municipality might make a loan of funds to a developer to fund capital expenditures relating to an affordable housing development. While each determination will be fact-specific, a key factor will be whether the Municipality holds a long-term recorded use restriction limiting the use of the property in a manner that furthers a public purpose. For example, M.G.L. c. 184, § 31 specifically authorizes use restrictions, either in perpetuity or for a specified number of years, for several identified purposes, including conservation, historic preservation, agriculture, watershed restriction and affordable housing.

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<sup>7</sup> *Id.*

4. Consistency with Capital Improvements Plan.

For a Municipality with a Capital Improvements Plan, factors relevant to the determination as to whether a particular cost constitutes a “capital expenditure” that may be funded from 40R Payments will include whether the expenditure is associated with tangible property that has a minimum useful life span consistent with the Municipality’s Capital Improvements Plan, and whether the amount of the expenditure exceeds the threshold established under the Municipality’s Capital Improvements Plan.

5. Consultation with Division of Local Services.

This guidance is intended to offer Municipalities a general sense of the types of expenditures that will qualify as “capital expenditures” that may be funded from 40R Payments. Municipal officials with questions regarding specific proposed expenditures should consult DLS. For contact information and additional DLS guidance, see <https://www.mass.gov/orgs/division-of-local-services>.

**D. Cluster Zoning**

1. General

This Guidance provides a framework for Municipalities to successfully implement Cluster Zoning in Starter Home Zoning Districts as contemplated by M.G.L. c. 40R and the Regulations.

- a. Cluster Zoning, also sometimes referred to as “open space residential zoning” is premised on the “smart growth” goals of promoting the efficient use of land by minimizing the aggregate land that is developed while preserving open space and mitigating the development’s impact upon surrounding areas.
- b. Specifically, Cluster Zoning is zoning in which (a) the permitted density of residential development is determined for the entire area of a development, rather than on a per-house-lot basis and (b) dimensional requirements such as lot area, frontage, setbacks of structures from lot lines and/or other structures and minimum lot area per dwelling unit are reduced for individual house lots to allow “Cluster Development” - concentration of construction on a smaller part of the land than would be required under conventional zoning. To preserve open space and mitigate the impact of a clustered development on adjacent parcels, under the Regulations, Cluster Development requires permanent conservation of land for passive or active recreational activities, pursuant to a recorded use restriction. *See* 760 CMR 67.02: Cluster Zoning.
- c. For purposes of M.G.L. c. 40R, Cluster Zoning is primarily relevant to the development of Starter Home Zoning Districts, given the density requirements

applicable in a Smart Growth Zoning District under M.G.L. c. 40R, § 6. The lower number of residential units required in a Starter Home Zoning District makes it more feasible to set aside a portion of a development parcel as permanently restricted open space while concentrating residential development in certain portions of the development parcel. In addition, because the Regulations provide greater flexibility in determining whether a particular location will qualify as a Highly Suitable Location for establishment of a Starter Home Zoning District (as opposed to a Smart Growth Zoning District), utilizing Cluster Development techniques is important to assure that the Starter Home Zoning District will serve the statutory goals identified under M.G.L. c. 40R, § 1.

- i. Consistent with the requirements for Smart Growth Zoning Districts, the Regulations allow a Municipality to demonstrate that a proposed Starter Home Zoning District is in a Highly Suitable Location based on its location in either an Area of Concentrated Development or a Substantial Transit Access Area. If a Starter Home Zoning District satisfies the requirements of 760 CMR 59.04 (a)(1) (Substantial Transit Access Area) or 760 CMR 59.04(a)(2) (Area of Concentrated Development), then development within the Starter Home Zoning District must utilize *either* Cluster Development or Low Impact Development Techniques, but Cluster Development is not an absolute requirement.
- ii. If, on the other hand, the Starter Home Zoning District is not within a Substantial Transit Access Area or an Area of Concentrated Development, but qualifies as a Highly Suitable Location solely based on Pedestrian Access to a Pedestrian Destination, 45pursuant to 760 CMR 67.02: Highly Suitable Location (a)4.b., the Starter Home Zoning District *must* incorporate Cluster Zoning so as to permit Cluster Development. 760 CMR 67.02: Highly Suitable Location (a)3.

## 2. Considerations to Developing Cluster Zoning

- a. *Density.* To satisfy the Regulations' development density requirements, Starter Home Zoning Districts are required to provide for a minimum allowable As-of-right density of no less than 4 units per acre of Developable Land. In a Starter Home Zoning District that adopts Cluster Zoning the minimum allowable density for a given development parcel may be achieved by clustering development within any specified area of the Developable Land that comprises the development parcel as long as the development conforms to the applicable minimum allowable density. This method of determining the applicable minimum allowable density promotes the flexibility necessary to encourage Cluster Development while also meeting the Starter Home Zoning density requirements.

- b. *Dimensional Requirements.* Cluster Zoning must provide for the reduction or modification of development site sizes, unit placement, shape, and other dimensional requirements for development sites to promote the flexibility needed for Cluster Development(s) within a Starter Home Zoning District.
- c. *Dedicated Open Space.*
  - i. Cluster Zoning must promote permanent conservation of Dedicated Open Space and must provide for a minimum percentage of the Starter Home Zoning District to be Dedicated Open Space that is usable for passive or active recreational activities based on a careful assessment of developable lands (e.g., identifying whether any portion of the developable lands are significantly restrained by existing wetlands resources or whether there are significant parcels with the majority of their developable land in resource areas). The area of a Dedicated Open Space will in no event be required to be more than the amount of open space per dwelling unit required by the underlying zoning.
  - ii. Dedicated Open Space must:
    - 1. Be contiguous (unless it is determined on a case by case basis that allowing noncontiguous Dedicated Open Space promotes the goals of Smart Growth and the protection of identified conservation areas).
    - 2. Be used for the protection of one or more of the areas identified in 760 CMR 59.02: Dedicated Open Space.
    - 3. Wastewater and stormwater management systems serving the SHZ Districts may be located within the Dedicated Open Space.
  - iii. Dedicated Open Space must be conveyed to the Municipality<sup>8</sup> or subject to a permanent Conservation Restriction or Agricultural Preservation Restriction in accordance with M.G.L. c. 184 § 31, conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, or Department of Agricultural Resources, as applicable. The Dedicated Open Space must be perpetually kept in an open state, preserved exclusively for its purposes, and maintained in a manner ensuring its suitability for its intended purpose. Any proposed open space that will not be conveyed to the Municipality and does not qualify for

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<sup>8</sup> For purposes of determining the General Land Area Minimum of a Municipality pursuant to M.G.L. c. 40B, § 20 and 760 CMR 56.03(3)(b), Dedicated Open Space that is conveyed to the Municipality will be subtracted from both the numerator and denominator of the General Land Area Minimum calculation.

inclusion in an Conservation Restriction or Agricultural Preservation Restriction or that is rejected from inclusion in these programs by the Commonwealth of Massachusetts shall be subject to a Restrictive Covenant, which shall be approved by and enforceable by the Municipality.

- iv. The Starter Home Zoning must provide for the maintenance of the Dedicated Open Space.

## E. Housing History and Strategy

Recent changes to M.G.L. c. 40R and the Regulations afford Municipalities greater flexibility in the documentation they must submit to DHCD to demonstrate their housing history and strategy as part of the documentation required for DHCD to make a preliminary determination of eligibility. Municipalities may now choose to submit an existing Comprehensive Housing Plan or Housing Production Plan (with certain updates, as described below), or a new, streamlined Housing Production Summary, using a template provided by DHCD.

1. Massachusetts Housing Data Portal. As a starting point, whether choosing to submit a new Housing Production Summary or relying on an existing Comprehensive Housing Plan or Housing Production Plan, a Municipality must submit a copy of its **Housing Data Profile** and **Basic Needs Assessment** exported from the **Massachusetts Housing Data Portal** (<http://www.housing.ma/>). This new portal provides an immediately available compilation of information about each Municipality in the Commonwealth, and the ability to produce data exported from the portal<sup>9</sup> significantly reduces the amount of work needed for Municipalities to document their current demographic and housing data.
2. Housing Production Summary. A Municipality may now utilize a streamlined Housing Production Summary to provide information regarding the Municipality's affordable housing production history, housing needs and demand, development constraints and capacity, and housing goals and strategies. This template provides links to readily available, Internet-based data sources and is designed as a straightforward tool that can be completed by municipal staff. A Municipality may, but is not required to, use a Housing Production Summary template to supplement an existing Housing Production Plan or Comprehensive Housing Plan, particularly if there have been significant changes in housing supply or housing needs since the original plan was created.
3. Housing Production Plan. A Municipality that has a DHCD-approved Housing Production Plan currently in effect may submit the Housing Production Plan, together with the Housing Data Profile and Basic Needs Assessment exported from the Massachusetts Housing Data

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<sup>9</sup> Data from the Massachusetts Housing Data Portal may be exported to a CSV file (a form of Excel file) by selecting the appropriate service (Housing Data Profile or Basic Needs Assessment), then clicking "Export", and following the instructions on the portal to save the document. Column widths may need to be adjusted so that all data is visible.

Portal, to satisfy the requirements of 760 59.03(1)(h). If DHCD has granted certification of compliance with the Housing Production Plan, the Municipality should also submit a copy of the certification letter. A Municipality submitting a Housing Production Plan must document any significant changes since the existing Housing Production Plan was approved (and, if applicable, certified).

4. Comprehensive Housing Plan. A Comprehensive Housing Plan can be any planning document prepared by a Municipality that provides an assessment of the Municipality's housing needs and describes specific strategies, including but not limited to those contained in the 40R Zoning, to address those needs, provided that it meets the following requirements:
  - a. A Comprehensive Housing Plan may be developed as part of the 40R process, but may also take the form of a community development plan or an equivalent document prepared by the Municipality within the past five years, including documents created for another purpose.
  - b. The plan should contain, at a minimum, information comparable to what would need to be provided as part of a Housing Production Summary template. In particular, the plan must contain sufficient information to demonstrate compliance with the following conditions to DHCD approval under 760 CMR 59.04:
    - i. The plan must contemplate development of housing which is appropriate for diverse populations, including households with children, individuals, households including individuals with disabilities, households including elderly persons, and other households. *See* 760 CMR 59.04(g).
    - ii. The plan must comply with the requirements of 760 CMR 59.04(i) regarding occupancy restrictions in a Smart Growth Zoning District or Starter Home Zoning District, as applicable.
    - iii. The plan must be consistent with federal, state and Municipal fair housing laws. *See* 760 CMR 59.04(j).
  - c. If an existing, previously adopted plan did not address all of the areas covered in the Housing Production Summary template, the Municipality may supplement the plan, using the Housing Production Summary template or any other format that provides comparable information.
  - d. A Comprehensive Housing Plan (including any separate documents comprising part of the plan) adopted more than five years prior to the Municipality's application for a preliminary determination of eligibility of 40R Zoning must include an update containing the latest available data (*e.g.*, US Census) corresponding to the data

covered in the initial document, if not covered by the Housing Data Profile and Basic Needs Assessment.

## **F. Infrastructure Certification**

DHCD will update this Guidance in the near future with guidance on certification relating to Infrastructure and Planned Infrastructure.

## **G. Low Impact Development Techniques**

### **1. Applicability of Low Impact Development Techniques**

DHCD generally encourages the use of Low Impact Development Techniques as incorporated by the Massachusetts Department of Environmental Protection (DEP) in its adoption of the Wetlands Protection Act stormwater standards. DEP's stormwater standards promote the use of low impact development techniques as part of an overall environmentally sensitive site design approach to stormwater management for development projects, consistent with the Smart Growth goal of preserving open space, farmland, natural beauty and critical environmental areas.

There are two circumstances under which the use of Low Impact Development Techniques is required for DHCD approval of Starter Home Zoning Districts:

- a. *Expedited Review.* Municipalities that wish to qualify for consideration of Starter Home Zoning Districts under the Regulations' expedited review process established in 760 CMR 59.03(2) must utilize Low Impact Development Techniques best practices.
- b. *Qualification Under 760 CMR 59.02: Highly Suitable Location(a)3.* In addition, if a Municipality seeks to qualify a Starter Home Zoning District as a Highly Suitable Location under 760 CMR 59.02: Highly Suitable Location(a)3., the Starter Home Zoning must require all development within the District to utilize Low Impact Development Techniques.

### **2. Massachusetts Department of Environmental Protection Stormwater Standards**

When required to adopt Low Impact Development Techniques by the Regulations, Municipalities must utilize Low Impact Development Techniques best management practices (BMP) in accordance with the Massachusetts Stormwater Handbook published by DEP, as the same may be amended from time to time (Stormwater Handbook). In particular, Municipalities must utilize BMPs recognized to be suitable in Volume 2, Chapter 2 of the Stormwater Handbook, which provides technical specifications for BMPs. That section of the Stormwater Handbook provides guidance on how to implement BMPs in engineering designs and illustrates how BMPs can be utilized to achieve compliance



with the stormwater standards of the Wetlands Protection Act. Municipalities should refer to the following relevant sections of the Stormwater Handbook for further guidance:

- The Three Components of Stormwater Management, Volume 1, Chapter 2, pp. 1-7;
- Credit No. 1 Environmentally Sensitive Site Development, Volume 3, Chapter 1, pp. 44-46;
- Credit No. 2 Rooftop Runoff Directed to Qualifying Areas, Volume 3, Chapter 1, pp. 46-50;
- Credit No. 3 Roadway, Driveway, or Parking Lot runoff Directed to Qualifying Areas, pp. 50-53;
- Bioretention (rain garden) specifications: Volume 2, Chapter 2, page 23-35;
- Constructed stormwater wetland (including gravel wetlands) specifications: Volume 2, Chapter 2, pp. 36-48;
- Treebox filter specifications: Volume 2, Chapter 2, pp. 61-62;
- Water quality swale: Volume 2, Chapter 2, pp. 77-82;
- Grass Channels: Volume 2, Chapter 2, pp. 73-76; and
- Green roofs: Volume 2, Chapter 2, pp. 112-116.

The Stormwater Handbook is available at DEP's website:

<https://www.mass.gov/guides/massachusetts-stormwater-handbook-and-stormwater-standards>.

## **H. Roadway and Subdivision Design**

To qualify for the expedited eligibility determination process, a proposed Starter Home Zoning District must utilize best practice standards for roadway and subdivision designs as identified in *Sustainable Neighborhood Road Design, A Guidebook for Massachusetts Cities and Towns*, dated May 2011, as the same may be amended from time to time. (Available at: [http://www.apa-ma.org/apa-ma\\_documents/Publications/NRB\\_Guidebook\\_2011.pdf](http://www.apa-ma.org/apa-ma_documents/Publications/NRB_Guidebook_2011.pdf))

## **I. Substantially Developed Land**

1. Property currently in use by a national credit tenant will be presumed to be Substantially Developed Land and generally not considered to be a marginal or declining use.
2. Whether or not buildings and other improvements on a particular parcel or portion of a parcel are considered Substantially Developed Land will be assessed in part in relation to what is allowed under the Underlying Zoning. The mere fact that the proposed Smart Growth Zoning would allow more intensive development on a given piece of land than the existing use and improvements, is not a sufficient demonstration that such land is Underutilized Land rather than Substantially Developed Land.

3. For Smart Growth Zoning Districts, parcels or portions of parcels that are generally and substantially occupied as a residential use or are directly serving such use at the time of application for the proposed District, will be presumed to be Substantially Developed Land.
4. Parcels or portions of parcels that are fully occupied, in year round use reasonably consistent with or exceeding the density of the underlying zoning, and are in reasonable condition (e.g., not characterized by substandard, decadent or blighted conditions as such terms apply under M.G.L. c. 121B or other clearly marginal or declining use) shall be presumed to be Substantially Developed Land in Smart Growth Zoning Districts unless the Municipality can demonstrate that such parcels are listed for sale and would be immediately available for viable redevelopment under the Smart Growth Zoning.

#### **J. Three Contiguous Acres for Starter Homes**

Solely for the purposes of determining whether the Starter Home Zoning District consists of not less than three contiguous acres of Developable Land area, DHCD may treat land that would otherwise qualify as Substantially Developed Land as Developable Land where there is nonetheless sufficient Developable Land within the Starter Home Zoning District that would allow for the development of at least 12 Starter Homes within the District,. In addition, for the purpose of determining whether the Starter Home Zoning District consists of not less than three contiguous acres of Developable Land, the Developable Land calculation may include qualifying undeveloped or underutilized portions of a given parcel and need not comprise the entire parcel in order for such portions to qualify as Developable Land.

## **IV. FORMS, TEMPLATES, AND RESOURCES**

### **A. Model Zoning Bylaws**

DHCD is currently preparing both Smart Growth and Starter Home Zoning bylaw templates. Once they are finalized, this Guidance will be updated to include both templates. In the meantime, Municipalities should refer to the Smart Growth Zoning template (and guidance) that is currently available on DHCD's website (<https://www.mass.gov/service-details/chapter-40-r>). The template is accessible by clicking on the "40R Local Zoning Bylaw Guidance" link under the heading "General Information about 40R."

1. Model Smart Growth Zoning Bylaw  
**(forthcoming)**
2. Model Starter Home Zoning Bylaw  
**(forthcoming)**

### **B. Application Forms**

DHCD is currently preparing the application instructions and forms for both Smart Growth Districts and Starter Home Districts. This Guidance will be updated to include them once they are finalized. In the meantime, Municipalities should refer to the Chapter 40R Application and Application Instructions that are currently available on DHCD's website (<https://www.mass.gov/service-details/chapter-40-r>). The documents are accessible by clicking on the "Chapter 40R Application" or "Chapter 40R Application Instructions" under the heading "General Information about 40R."

1. Application Instructions  
**(forthcoming)**
2. Smart Growth District Application  
**(forthcoming)**
3. Starter Home District Application  
**(forthcoming)**

4. Expedited Starter Home District Review Checklist (see attached)

**MASSACHUSETTS DEPARTMENT OF  
HOUSING AND COMMUNITY DEVELOPMENT**

**EXPEDITED STARTER HOME ZONING DISTRICT APPLICATION CHECKLIST**

**Qualification.** In order to qualify for the expedited eligibility determination process pursuant to 760 CMR 59.03(2), a proposed Starter Home Zoning District must either meet the requirements in Qualifications A through F below, or must meet the requirements in Qualifications A through E plus the additional requirements in Qualifications G and H below. A Municipality seeking to qualify for the expedited process must complete and submit this cover sheet with its 40R Application:

- A.** Does the Starter Home Zoning conform substantially to the DHCD Starter Home Zoning template, and does the application include a copy of the Starter Home Zoning indicating all changes from the template with this application (yes\_\_\_ no\_\_\_)?
- B.** Does the Starter Home Zoning District allow for no more than thirty (30) Starter Homes in the District (yes\_\_\_ no\_\_\_)?
- C.** Does the Starter Home Zoning District require that each Starter Home in the District contain at least three (3) bedrooms (yes\_\_\_ no\_\_\_)?
- D.** Does the Starter Home Zoning District utilize Low Impact Development Techniques as defined in 760 CMR 59.02 (yes\_\_\_ no\_\_\_)?
- E.** Does the Starter Home Zoning District utilize best practices for roadway and subdivision design as referenced in DHCD guidance (yes\_\_\_ no\_\_\_)?
- F.** Is this Application accompanied by a Developer Certificate of Feasibility as defined in 760 CMR 59.02 (yes\_\_\_ no\_\_\_)?
- G.** Are the Starter Home Zoning District Design Standards limited in scope to addressing (1) the size and location of garages/carports, decks, or other non-living area structures associated with a Starter Home or Accessory Dwelling Unit and (2) basic roof style (yes\_\_\_ no\_\_\_)?
- H.** Can development under the Starter Home Zoning be carried out without being subject to any Additional Municipal Standards, as defined in 760 CMR 59.02, either because no such Additional Municipal Standards exist or because they do not apply within the Starter Home Zoning District (yes\_\_\_ no\_\_\_)?

The undersigned representative of the City/Town of \_\_\_\_\_ hereby certifies that all information in this expedited application is accurate and complete as of the date hereof.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Agency: \_\_\_\_\_

Date: \_\_\_\_\_

5. Housing Production Summary (see attached)

### Housing Production Summary – Template

(Note: please submit in conjunction with corresponding Housing Data Profile and Basic Needs Assessment exported from [Massachusetts Housing Data Portal](#) )

AFFORDABLE HOUSING PRODUCTION HISTORY			
Question	X if Yes	Number of Units/Percent Affordable	Comments/Explanation
<b>Units on Subsidized Housing Inventory (corresponding to DHCD's most recently posted SHI)</b>			
Homeownership – No Age Restrictions	<input type="checkbox"/>		
Homeownership – Age Restricted	<input type="checkbox"/>		
Rental – No Age Restriction	<input type="checkbox"/>		
Rental – Age Restricted	<input type="checkbox"/>		
<b>Units Eligible to be Added to most recently posted Subsidized Housing Inventory</b>			
Homeownership – No Age Restrictions	<input type="checkbox"/>		
Homeownership – Age Restricted	<input type="checkbox"/>		
Rental – No Age Restriction	<input type="checkbox"/>		
Rental – Age Restricted	<input type="checkbox"/>		
<b>Local Capacity/Tools Adopted</b>			
Question:	<i>X if Yes</i>	<i>#/% (as applicable)</i>	<i>Comments/explanation</i>
Full- or part-time planning staff	<input type="checkbox"/>		
Affordable Housing Trust	<input type="checkbox"/>		
Inclusionary Zoning	<input type="checkbox"/>		
Local Initiative Projects	<input type="checkbox"/>		
40R District	<input type="checkbox"/>		
Other By-Right Zoning for Multifamily Housing	<input type="checkbox"/>		
Expired Housing Production Plan	<input type="checkbox"/>		
<b>Additional narrative explanation:</b>			



HOUSING NEEDS AND HOUSING DEMAND ASSESSMENT		
Overview/Gap Analysis		
Question	\$ or %, as applicable	Directions as to Information Source (in some instances, corresponding data may also be available from the Massachusetts Housing Data Portal)
Median Home Value		Use most recent American Community Survey Selected Housing Characteristics (Table DP04), Median Home Value
Median Rent		Use most recent American Community Survey Selected Housing Characteristics (Table DP04), Median Gross Rent
Median Household Income		Use most recent American Community Survey Financial Characteristics (Table S2503), Median Household Income
Area-Wide Fair Market Rent for 2-bedroom apartment		Metropolitan Area or County Data at <a href="http://nlihc.org/oor/massachusetts">http://nlihc.org/oor/massachusetts</a>
Area-Wide Annual Income Needed to Afford 2-Bedroom Apartment		Metropolitan Area or County Data at <a href="http://nlihc.org/oor/massachusetts">http://nlihc.org/oor/massachusetts</a>
Area-Wide Estimated Renter Median Income		Metropolitan Area or County Data at <a href="http://nlihc.org/oor/massachusetts">http://nlihc.org/oor/massachusetts</a>
Area-Wide 30% of Area Median Income		Metropolitan Area or County Data at <a href="http://nlihc.org/oor/massachusetts">http://nlihc.org/oor/massachusetts</a>
Percentage of Households that are Cost-Burdened		
Percentage of Housing Units with a Mortgage Whose Selected Monthly Owner Costs Exceed 30% of Household Income		Use most recent American Community Survey Selected Housing Characteristics (Table DP04), Selected Monthly Owner Costs as a Percentage of Household Income (SMOCAP1)
Percentage of Housing Units Where Gross Rent Exceeds 30% of Household Income		Use most recent American Community Survey Selected Housing Characteristics (Table DP04), Gross Rent as a Percentage of Household Income (GRAPI)
Demographic Information		
% of Households Age 65 and Over		Use data from most recent American Community Survey Occupancy Characteristics (Table S2501)(provide aggregate of all types of households with a householder 65 and over)

ANALYSIS OF DEVELOPMENT CONSTRAINTS AND CAPACITY		
Overview of Constraints and Capacity		
Question:	Y/N	Briefly Explain:
Are there special local environmental conditions that limit development (for example, coastal conditions, wetlands, water bodies, etc.)?	Y <input type="checkbox"/> N <input type="checkbox"/>	
Are all areas of the city/town served by municipal water?	Y <input type="checkbox"/> N <input type="checkbox"/>	
Are all areas of the city/town served by municipal sewer?	Y <input type="checkbox"/> N <input type="checkbox"/>	
Are there local septic laws in addition to state requirements?	Y <input type="checkbox"/> N <input type="checkbox"/>	
Are there local water quality laws in addition to state requirements?	Y <input type="checkbox"/> N <input type="checkbox"/>	
Are there other local environmental or health-related laws in addition to state requirements?	Y <input type="checkbox"/> N <input type="checkbox"/>	
Do local subdivision control laws impose constraints on new development?	Y <input type="checkbox"/> N <input type="checkbox"/>	
Does the municipality have adequate	Y <input type="checkbox"/>	

infrastructure to meet its housing goals?	N <input type="checkbox"/>	
Does the municipality have adequate municipal staff capacity to meet its housing goals?	Y <input type="checkbox"/> N <input type="checkbox"/>	
<b>Additional narrative explanation:</b>		
<b>HOUSING GOALS &amp; STRATEGIES</b>		
<b>Housing Goals</b>		
Name of Goal (add rows as necessary):	Explanation:	Measurement (e.g., total units, units per year:
<b>Any additional information necessary to explain the municipality's housing goals (including measurable, numerical goals) in terms of the production, diversification, rehabilitation, preservation and other support with respect to the community's identified needs housing needs:</b>		
<b>Housing Strategies</b>		
Name of Strategy (add rows as necessary):	Explanation:	Measurement (e.g., total units, units per year:

<p><b><i>Any additional information necessary to explain the municipality's housing strategies for achieving its housing goals that address its identified housing needs:</i></b></p>		

### **C. Annual Update Forms**

Separate templates are included for districts in active development, future districts and mature districts that have been substantially built out.

1. Districts in Active Development (see attached)

Name of Municipality \_\_\_\_\_, MA

**Annual Update – District in Active Development  
Smart Growth Zoning District-Chapter 40R**

**Fiscal Year July 1, 2017-June 30, 2018**

In accordance with 760 CMR 59.00, a Municipality that has received a Letter of Eligibility\* from DHCD for a proposed District by the end of the previous fiscal year ending on June 30, must file an Annual Update on or before July 31 of each year. **However, if the Municipality is requesting 40S payments from the Department of Revenue, an annual update must be filed with DHCD on or before July 15 of each year.** The information provided in the Annual Update enables DHCD to undertake an annual review and prepare a report on the 40R program, and to issue a Certificate of Compliance\*. A Municipality must file this Annual Update with DHCD in order to be eligible for any Density Bonus Payment\*.

The Municipality must submit the following:

- (a) A cover letter to DHCD;
- (b) A list of all Districts within the Municipality;
- (c) For each District (not Sub-Districts) within the Municipality, a completed original of pages 1-4 of this form; and
- (d) For all completed 40R Projects which are not otherwise required to submit an annual monitoring report to DHCD under a state housing finance/subsidy program, attach a copy of the most recent annual report submitted to the Municipality by the respective Monitoring Agent, as required under the Smart Growth Zoning.
- (e) A completed original of page 5 of this form. (Only 1 completed page 5 per municipality.)

Each blank requires a response. N/A and 0 are acceptable responses.

\_\_\_\_\_ District  
(Name of District)

**A. District Land Area (in acres)**

Total land area \_\_\_\_\_

Developable Land area\* \_\_\_\_\_

Substantially Developed Land area\* \_\_\_\_\_

Developable Land area zoned for:

single-family \_\_\_\_\_

2-3 family \_\_\_\_\_

multi-family\* \_\_\_\_\_

Name of Municipality \_\_\_\_\_, MA

Substantially Developed Land area zoned for:

single-family \_\_\_\_\_  
2-3 family \_\_\_\_\_  
multi-family \_\_\_\_\_

B. Units

- 1) Building Permits had been issued during previous fiscal year  
(July 1, 2017 through June 30, 2018):

Total Number of Units	Number of Bonus Units*
single-family _____	_____
2-3 family _____	
multi-family _____	

- 2) Units completed (issuance of occupancy permits) during the previous fiscal year  
(July 1, 2017-June 30, 2018):

Total Number of Units	Number of Bonus Units
_____	_____

- 3) Units completed (issuance of occupancy permits) in total since District was  
Approved

Total Number of Units	
<b>Affordable*</b>	<b>Market Rate</b>
1 bedroom _____	1 bedroom _____
2 bedrooms _____	2 bedrooms _____
3 bedrooms _____	3 bedrooms _____
<b>Accessible</b>	
1 bedroom _____	
2 bedrooms _____	
3 bedrooms _____	

Name of Municipality \_\_\_\_\_, MA

**Total Number of Rental Units** \_\_\_\_\_

**Affordable** \_\_\_\_\_  
1 bedroom \_\_\_\_\_  
2 bedrooms \_\_\_\_\_  
3 bedrooms \_\_\_\_\_

**Market Rate** \_\_\_\_\_  
1 bedroom \_\_\_\_\_  
2 bedrooms \_\_\_\_\_  
3 bedrooms \_\_\_\_\_

**Accessible** \_\_\_\_\_  
1 bedroom \_\_\_\_\_  
2 bedrooms \_\_\_\_\_  
3 bedrooms \_\_\_\_\_

**Total Number of Homeownership Units** \_\_\_\_\_

**Affordable** \_\_\_\_\_  
1 bedroom \_\_\_\_\_  
2 bedrooms \_\_\_\_\_  
3 bedrooms \_\_\_\_\_

**Market Rate** \_\_\_\_\_  
1 bedroom \_\_\_\_\_  
2 bedrooms \_\_\_\_\_  
3 bedrooms \_\_\_\_\_

**Accessible\*** \_\_\_\_\_  
1 bedroom \_\_\_\_\_  
2 bedrooms \_\_\_\_\_  
3 bedrooms \_\_\_\_\_

C. Progress

Prepare a written narrative describing how the District is being developed in a manner that reasonably complies with the residential density and Affordability standards established for that District.

D. Payments

Provide the amounts of payments received during the previous fiscal year  
(July 1, 2017-June 30, 2018).

Zoning Incentive Payment:\* \_\_\_\_\_  
Density Bonus Payment:\* \_\_\_\_\_



Name of Municipality \_\_\_\_\_, MA

Provide the amounts and anticipated timing of payments to be received during the current fiscal year **(July 1, 2018-June 30, 2019)**.

Zoning Incentive Payment:	_____	anticipated timing	_____
Density Bonus Payment :	_____	anticipated timing	_____

E. Projects\* subject to Plan Review\* Procedure

1. Number of Projects approved for which the Plan Review procedure was completed. \_\_\_\_\_

2a Number of Projects denied for which the Plan Review procedure was completed. \_\_\_\_\_  
(Attach a copy of each Plan Review decision for which a Project was denied.)

For any project denied, submit sufficient information prepared by the Town

b. Council or City Solicitor explaining why such denial was consistent with the Smart Growth Zoning.

3. Total Number of Projects currently under review: \_\_\_\_\_

Number of units proposed	_____
single-family	_____
2-3 family	_____
multi-family	_____

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

2. Future Districts (see attached)

Name of Municipality \_\_\_\_\_, MA

**Annual Update – Future District(s)**  
**Smart Growth Zoning District-Chapter 40R**

**Fiscal Year July 1, 2017-June 30, 2018**

- A. If the Municipality has a proposed District(s), provide the amounts and anticipated timing of payments to be received during the current fiscal year  
**(July 1, 2018-June 30, 2019).**

	<b>District</b>
(name of Proposed District)	

Zoning Incentive Payment:		anticipated timing	
Density Bonus Payment :		anticipated timing	

- B. **An Estimate of Future Districts**

1. Number of new Districts \_\_\_\_\_

If any new Districts, size of each new District

Dist. 1: Total Land Area _____	Developed Land Area _____
Dist. 2: Total Land Area _____	Developed Land Area _____
Dist. 3: Total Land Area _____	Developed Land Area _____

2. If any new Districts, potential number of Bonus Units:

Dist. 1: \_\_\_\_\_  
Dist. 2: \_\_\_\_\_  
Dist. 3: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

3. Mature (Effectively Built-Out) Districts (see attached)

Name of Municipality \_\_\_\_\_, MA

**Annual Update – Effectively Built-Out District  
Smart Growth Zoning District-Chapter 40R**

**Fiscal Year July 1, 2017-June 30, 2018**

In accordance with 760 CMR 59.00, a Municipality that has received a Letter of Approval or Letter of Conditional Approval from DHCD for a proposed District by the end of the previous fiscal year ending on June 30, must file an Annual Update on or before July 31 of each year.

**However, if the Municipality is requesting 40S payments from the Department of Revenue, an annual update must be filed with DHCD on or before July 15 of each year.**

DHCD records indicate that the Approved 40R District in your town/city is effectively built-out and no new units are anticipated. Therefore, DHCD has created a simplified Annual Update to be completed and submitted on or before the deadlines noted above.

**Please complete the following:**

The town/city of [Click here to enter text.](#) has an approved 40R District;

The name of the District is [Click here to enter text.](#);

There have been [Click here to enter text.](#) units completed since the District was approved;

The District is effectively built-out, no new units are anticipated for the District; and the town/city will inform DHCD of any changes within the District, new units are permitted, zoning changes, etc.

For all completed 40R Projects which are not otherwise required to submit an annual monitoring report to DHCD under a state housing finance/subsidy program, attach a copy of the most recent annual report submitted to the Municipality by the respective Monitoring Agent, as required under the Smart Growth Zoning.

[Click here to enter text.](#)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

[Click here to enter text.](#)

[Click here to enter text.](#)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

## **D. Project Review**

### **1. Affirmative Fair Housing Marketing Plan**

Affordable and Income-restricted units must be subject to affirmative fair housing marketing plans consistent with the requirements of DHCD's Affirmative Fair Housing Marketing and Resident Selection Plan Guidelines, dated May 2013, as the same may be amended from time to time. Without limitation, both at initial occupancy and on turnover, units must be marketed in accordance with an Affirmative Fair Housing Marketing Plan (AFHMP) approved by DHCD as a condition of entering into the 40R AHR required pursuant to the Regulations. In addition, compliance with the AFHMP shall be subject to monitoring as described in the 40R AHR.

2. Template of Affordable Housing Restriction for Rental Projects  
**(Forthcoming)**
3. Template of Affordable Housing Restriction for Ownership Projects  
**(Forthcoming)**
4. Template of Affordable Housing Deed Rider for Ownership Projects  
**(Forthcoming)**